Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

HARRY McNAMARA, *et al.*,

Petitioners,

v.

CITY OF RITTMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *San Remo Hotel, L.P. v. City and County of San Francisco,* 125 S.Ct. 2491, 2507, (2005), four concurring justices believed "our decision in *Williamson County*... may have been mistaken." They wrote: It is not clear ... that *Williamson County* was correct in demanding that ... the claimant must seek compensation in state court before bringing a federal takings claim in federal court." *San Remo*, 125 S.Ct. at 2508. The court of appeals, however, has held that if Petitioners want compensation for a taking under a "continuing violation" theory, they must first seek compensation in state court including state common law tort remedies.

1. Whether a Fifth Amendment takings claimant must first seek compensation in state court under state takings law, including state common law tort remedies, as a necessary step before bringing a federal takings claim in federal court?

Petitioners filed a state court action for a monetary remedy from the city, alleging that the drilling of wells on nearby land caused "unreasonable dewatering," a cause of action under Ohio law. Petitioners did not receive monetary relief in state court, so within a year they filed suit in federal court seeking just compensation under the Fifth Amendment. The court of appeals held that the federal claim for "past violations" of the Takings Clause was time-barred, because the Fifth Amendment claim accrued when Petitioners "knew or should have known of the underlying injury." The court of appeals is in conflict with other federal circuits which have held, following "*Williamson County*

Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), that a Fifth Amendment takings claim does not accrue until it becomes ripe, after state procedures are pursued and monetary relief is denied.

2. Whether a Fifth Amendment takings claim accrues when the claimant first knew or should have known of his injury, or after a claimant has sought and been denied compensation in state court?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioners are Harry McNamara, Dale Palmer, Carol Palmer, Thomas E. Dysinger, Dana Dysinger, Troy Pertee, Dianne Pertee, Howard Hopstetter, Carol Hopstetter, Rena Beyler, Roger Lance, Patricia Lance, Richard Rinehart, Deborah Rinehart, Jeffrey W. Nelson, Robert Hart, Marita Hart, Bill Greene, JoAnne Greene, Michael Boldman, Peggy Boldman, John Etling, Anna Mae Etling, Paul Wayts, Vermillah Wayts, Marie Winkler, POA James Winkler, Winkler Tire, Jim Winkler, Dollie Winkler, Patricia Shue, Walter Hostetler, Lucille Hostetler, John Bowman, Deb Bowman, Mary Slbaugh, Joe Slabaugh, Dan Asche, Robert Schorle, Linda Schorle, Annabelle Fisher, Marguerite Johnson, Mary M. Schorle, John Rastorfer, Ruth Rastorfer, Ronald V. Fecca, Jennifer Emch, James Hunt, Victoria Hunt, Melvin Schaffter, Gloria Shaffter, David Montgomery, Cynthia Montgomery, Dick Glessner, Keith Glanco, Diana Glanco, Carl Steiner, Carol Steiner, Steiner Farm, Herman Winkler, Lucille Winkler, Caulinbine Yost, Stephen M. Reber, Paul Glessner, Maxine Glessner, Lloyd Wiles, Alice Wiles, John Bischoff, James Bischoff, Barbara Bischoff, Olga Landis, Ralph Griffith, Louise Griffith, Bill Watts, Mary Watts, R.D. Trogdon, Shirley Trogdon, Josephine Reynolds, Rebecca Reynolds, Kaye Maibach, Edward Maibach, Arlene Maibach, Everett Pertee, Helen Lucille Pertee, Woodrow Fankhauser, Betty Fankhauser, David Pilkington, Sharon Pilkington, Donald Glessner, Ruth Glessner, Kathleen Buckingham, Frederick Sheppard, JoEtta Sheppard, Milton Township, Paul Kawczk, Charlotte Kawczk, Charles Beyner, Melzena Beyner, William Cunningham, Anna Mae Cunningham, Alvin Maibach, Lynne Maibach, Thelma Drayer, and Kathy Cook. Winkler

Tire is a sole proprietorship and Milton Township is a governmental subdivision in Ohio.

Respondent is the Village of Rittman, a municipal corporation in northern Ohio.

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PETITION FOR A WRIT OF CERTIORARI

Harry McNamara, et al. ("Petitioners") respectfully petition this Court for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, App. 1a, is reported at 473 F.3d 633 (6th Cir. 2006). The opinion of the district court, App. 15a, is unpublished.

JURISDICTION

The court of appeals issued its decision on January 8, 2007; Justice Stevens extended the time to file this petition to and including May 9, 2007. App. 13a. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment's Due Process and Takings Clauses provide: "No person shall...be deprived of...property without due process of law; nor shall private property be taken for public use without just compensation." U.S. Const. Amend. V. They are applicable to the States through the Fourteenth Amendment, which provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, §1.

STATEMENT OF THE CASE

A. Rittman Takes Petitioners' Groundwater

Thirteen (13) years in litigation and Petitioners have yet to have a decision on the merits of their claims.

Petitioners are individual homeowners that own and reside in their respective homes in close proximity to each other in Wayne County, Ohio. Many of the petitioners had lived in their homes for more than 20 years prior to the events herein. Each of the petitioners supplied their home or family farm with water for all domestic uses from their individual water well. There are no sources of public water close to most petitioners so without water from their respective wells, homes and family farms would be abandoned without a source of water.

In the late 1970's, Rittman showed interest in acquiring land, miles outside its boundaries, to construct a new municipal well field. The Ohio Department of Natural Resources responded to citizen's concerns about this new well field by conducting an investigation and issuing a report that states, in part:

> Concerned about potential impacts to existing private water wells in the vicinity of the Village of Sterling, the Milton Township Trustees conducted a meeting in Sterling in June 1976. Representatives of the ODNR-Division of Water-Ground Water Resources Section (GWRS) attended this meeting and stated that pumping the well field would lower water levels in the area. They also advised the City of Rittman to attempt to minimize the effects of pumping the well field on the surrounding private wells.

(See Appendix at p. 32a).

Despite the report by the Ohio Department of Natural Resources, Rittman installed a well field consisting of three wells and began to pump 500,000 to 750,000 gallons per day. Petitioners began experiencing problems with their wells going dry thereafter and have spent thousands of dollars, per family, restoring water to their property. In a number of instances their water now is of a poorer quality and a lesser quantity than what existed prior to Rittman's well field. Petitioners conserved water because they were afraid of running out of water and, therefore, restricted the use of their property. Problems with personal hygiene as a result of a lack of water were common. Petitioners did not have the ability to sell their property. A house without a source of water cannot be sold at its fair market value, and is worth less than that same house with a source of water.

The pumping of groundwater by Rittman has continued unabated from its inception to the present thereby continuing to take petitioners' property rights in ground water and inflict damages upon petitioners.

B. Petitioners' State Actions Seeking Compensation

In 1994, a lawsuit was filed in the Wayne County Common Pleas Court alleging that this Defendant, had caused Plaintiffs unreasonable harm under the decision of *Cline v. American Aggregates* 15 Ohio St, 3d 384, 474 N. E. 2d 324 (1984). This unreasonable harm was as a result of Rittman's pumping lowering the groundwater thereby drying up petitioners' water wells. There was no inverse condemnation claim filed because at that time, Ohio had no such procedure. *Coles v. Granville*, 448 F. 3d 853 (6th Cir. 2006). Petitioners brought this damages action to be compensated for their injuries to satisfy the Supreme Court's and Sixth Circuit's requirement that plaintiffs seek and be denied compensation before bringing a Fifth Amendment Takings claim to federal court. *Williamson* and *Silver v. Franklin Township, Board of Zoning Appeal*, 966 F. 2d 1031, 1034-1035 (6th Cir. 1991). The trial court granted summary judgment to Rittman on the basis of governmental immunity under the Ohio Revised Code. The

court of appeals affirmed the trial court, holding that Rittman was immune from liability . *McNamara v. Rittman*, 125 Ohio App. 3d 33, 707 N.E. 2d 967 (1998). The Ohio Supreme Court accepted a discretionary appeal, *McNamara v. Rittman*, 82 Ohio St. 3d 1414, 694 N.E. 2d 76 (1998) and the case was briefed and argued but was subsequently dismissed, as improvidently granted. *McNamara v. Rittman*, 85 Ohio St.3d 1206, 707 N.E. 2d 943 (1999).

C. District Court Dismisses Federal Claims

Petitioners filed their complaint in U.S. District Court complaint, pursuant to 42 U.S.C. § 1983, in 2000, seeking compensation under the Fifth Amendment Takings Clause. They also asserted a claim for the violation of their procedural due process rights. Rittman moved for summary judgment arguing that: 1. there was no taking; 2. the claims were barred by the statute of limitations; 3. *res judicata* and collateral estoppel barred plaintiffs' claims and 4. the federal courts should abstain from exercising jurisdiction. The trial court issued its decision holding that plaintiffs had a constitutionally protected property interest but that their claims were barred by the statute of limitations.

D. Court of Appeals Affirms

The Court of Appeals, after oral arguments, certified the following question to the Ohio Supreme Court:

> Does an Ohio homeowner have a property interest in so much of the groundwater located beneath the land owner's property as is necessary to the use and enjoyment of the owner's home?

The Ohio Supreme Court agreed to answer the question, pursuant to Rule XVIII of the Rules of Practice of the Ohio Supreme Court, since it "may be determinative of the proceeding." The Ohio Supreme Court answered the question affirmatively and held that "Ohio landowners have a property interest in the groundwater underlying their land and that governmental interference with that right can

constitute an unconstitutional taking." *McNamara v. Rittman*, 107 Ohio St. 3d 243, 838 N.E. 2d 640 (2005).

Petitioners argued that *Williamson* required them to seek compensation through state procedures in order to ripen their federal claims. In Ohio, at that time, the only state procedure was to seek compensation through a state common law tort claim under *Cline v. American Aggregates,* supra. There were no other state common law claims, such as trespass or nuisance, that would have established liability and there was no statutory claim available. Petitioners used that state procedure and when the Ohio Supreme Court rejected compensation, *McNamara v. Rittman*, 85 Ohio St.3d 1206, 707 N.E. 2d 943 (1999), petitioners had timely filed their federal takings claim. The Court of Appeals held that petitioners' claim for taking of their property interest in groundwater was ripe at the latest in 1994. The court reasoned that because Ohio had no inverse condemnation procedure when petitioners filed their state suit, there were no "reasonable, certain and adequate procedures" for obtaining compensation for a takings claim. Thus, Petitioners could have brought their suit directly to federal court. The Court of Appeals did not expressly rule on petitioners' argument that they were required to seek compensation through a state common law tort remedy but implicitly overruled it by holding that petitioners' claims were immediately ripe in 1994 without resort to Ohio compensation procedures. According to the court of appeals below, petitioners' claims were immediately ripe in 1994, which is when their claim accrued. Thus, their complaint was barred by the statute of limitations.

Petitioners also argued that since Rittman's pumping was ongoing and had continued from its inception to the present, that there was a continuing taking of their property rights. As to this claim, the Court of Appeals held that now, in 2006, Ohio did have a reasonable and certain procedure to obtain compensation, these claims were not ripe under *Williamson* and petitioners must return to state court to obtain compensation. Therefore, the court below

invoked *Williamson* to hold that some of petitioners' claims were ripe in 1994 and therefore outside the statute of limitations and to hold that the remainder of petitioners' claims were not yet ripe and must return to state court.

REASONS FOR GRANTING THE WRIT

I. WILLIAMSON'S STATE-LITIGATION RULE HAS CREATED CONFLICTS AND CONFUSION AND SHOULD BE RECONSIDERED.

A. The Generality of the State-Litigation Rule.

Williamson set forth two rules on ripening Fifth Amendment Takings claims. The first rule was to assure that government had reached a final decision. Herein there is a physical taking so the consideration underlying that rule is not present. *Forseth v. Village of Sussex*, 199 F. 3d 363, fn. 12 (7th Cir. 2000), *Asociacion De Subscripcion Conjunta Del Seguro De Responsabilidad Obligatorio v. Galarza*, 479 F.3d 63 (1st Cir. 2007).

The second rule on ripeness is at issue, " [I]f the government has provided an adequate process for obtaining compensation, and if resort to that process 'yields[s] just compensation,' then the property owner 'has no claim against * * * the Government' for a taking." Id. at 194. This second rule on ripeness has been termed "the state litigation rule", *San Remo Hotel v. City and County of San Francisco*, 545 U.S. 323 (2005), (concurring op. Ch. Justice Rehnquist, p. 349).

What is lacking in this rule is some definition. Does the phrase "adequate process for obtaining compensation" in state court require the filing of : a state takings claim; an inverse condemnation claim; a state common law tort claim; a Federal takings claim; or all of these in state court? This lack of definition allowed the Sixth Circuit to avoid the merits of petitioners' claims. Petitioners filed a state common law tort claim seeking compensation for their damages to comply with the state litigation rule of *Williamson*. Had petitioners been successful in reaching

the merits of their state common law tort claim, they would have been awarded compensation for their injury in the form of damages, which would have satisfied the Fifth Amendment. *Cline v. American Aggregates*, 64 Ohio App. 3rd 503, 582 N.E. 2d 1 (Ohio App. 1989). However the Court of Appeals below ignored petitioners' state common law tort claim and instead held that petitioners' takings claims were immediately ripe under *Williamson*, without resort to state compensation procedures, and therefore the statute of limitations ran on petitioners' takings claim while petitioners were seeking compensation through their state common law tort.

The lack of definition with the resulting inconsistencies in how this state litigation rule is applied should lead this Court to reexamine *Williamson*.

B. The Procedure That a Plaintiff Must Follow to Ripen a Federal Takings Claim Under *Williamson* Varies Among the Circuits.

Regardless of whether a state procedure for obtaining compensation for a takings has ever been judicially recognized, that procedure must be undertaken to comply with *Williamson* in a number of the circuits. However there is a distinction among those circuits that require pursuit of an inverse condemnation claim but not a state law takings claim. Some circuits require pursuit of a state common law tort remedy to satisfy *Williamson* but other circuits are not clear that this is a requirement. In two circuits, state court can be avoided under diversity jurisdiction by filing the state procedure in federal court. This maze has prompted courts to hold that the state litigation rule "has created a Catch-22 for takings plaintiffs." *Santini v. Connecticut Hazardous Waste Management Serv.*, 342 F. 3d 118, 127 (2nd Cir. 2003) and "has drawn substantial criticism" *Asociacion De Subscripcion Conjunta Del Seguro De Responsabilidad Obligatorio v. Galarza*, supra at 80.

The First Circuit has held that compliance with the state litigation rule does "not include litigation of a state [law] takings claim or general remedial cause of action under State law", but only includes those procedures specifically designed to avoid constitutional injury. *Asociacion De Subscripcion Conjunta Del Seguro De Responsabilidad Obligatorio v. Galarza*, supra at (1st Cir. 2007).

The Second Circuit requires resort to state law takings claims, even if there has never been recognition of those claims, to satisfy the state litigation rule. *Southview Associates v. Bongartz*, 980 F.2d 84 (2nd Cir. 1992), *cert. denied*, 507 U.S. 987 (1993); *Villager Pond v. Darien*, 56 F.3d 375 (2nd Cir. 1995), *cert. denied*, 519 U.S. 808 (1996). (Remedy potentially available).

The Fourth Circuit allows the state litigation rule to be avoided completely by pleading a physical taking as a Fourth Amendment seizure. *Presley v. City of Charlottesville*, 464 F.3d 480 (2006).

The Fifth Circuit has held that resort to all state procedures, even a state nuisance claim, in state court is required to satisfy the state litigation rule. *Samaad v. City of Dallas*, 940 F. 2d 925 (5th Cir. 1991). But a state taking claim can initially be brought in federal court if there is diversity jurisdiction. *Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382 (5th Cir. 2001).

The Seventh Circuit has held that resort to state procedures is required and is not futile even when the settled common law makes the result unlikely to be favorable. *Rockstead v. City of Crystal Lake*, 2006 U.S. App. LEXIS 32553 (7th Cir. 2006).

The Eighth Circuit generally requires pursuit of state procedures for compensation to satisfy the state litigation rule. *McKenzie v. City of Whitehall*, 112 F.3d 313 (8th Cir. 1997).

The Ninth Circuit has held that only state law remedies need be sought to satisfy the state litigation rule,

but any Fifth Amendment taking does not have to put forth in state court. *Dodd v. Hood River County*, 59 F.3d 852 (9th Cir. 1995), *later proceedings* 136 F. 3d 1219, *cert. denied* 525 U.S. 923 (1996).

The Tenth Circuit has held that failure to utilize a state's inverse condemnation procedure prevents a Federal takings claim from ripening. *S.K. Finance v. Ca Plata County*, 126 F.3d 1272 (10th Cir. 1997). However, the Court specifically held that under diversity jurisdiction a district court had jurisdiction to determine a state law inverse condemnation claim. *Id.*, at 1276.

In *Franco v. District of Columbia*, 456 F. Supp. 2d 35 (D.C. 2006), the Court held that in order for a takings claimant to ripen his claim under the state litigation rule, he would have to file in state court for contractual remedies that may be available to provide compensation.

C. *Williamson* Must be Reconsidered.

The decision below shows the problems with the generality of the state-litigation rule of *Williamson*. "It may seem perverse that one takings claim (past violations) be barred by statute of limitations because it was delinquently filed in federal court, and yet a similar claim (continuing violations) be barred because it was prematurely filed in federal court. But this is the nature of the federal-state interplay after *Williamson****". *McNamara v. Rittman*, supra, at p. 640. If petitioners were not required to comply with the state litigation rule of *Williamson*, then this bit of perversity would cease to exist and not trap litigants in its maze of complexity and uncertainty. Petitioners could file directly in federal court and have their Fifth Amendment rights adjudicated by the federal judiciary.

If petitioners were located in the First Circuit, then since there is no procedure to specifically avoid a constitutional injury in Ohio, *Coles v. Granville*, supra, they could go directly to district court to have their continuing violations claim heard. In the Second Circuit, petitioners would have to litigate all claims, such as state

tort claims seeking damages, to satisfy the state litigation rule. In the Fourth Circuit, petitioners could plead their claims as seizures of property under the Fourth Amendment thereby avoiding the state litigation rule completely and come directly to district court. In the Fifth Circuit, petitioners would be required to file all claims, including state law claims seeking damages, in state court to comply with the state litigation rule unless jurisdiction is based on diversity then petitioners could avoid state court and bring their state law claims in district court. In the Sixth Circuit, under the holding herein, petitioners were required to file in state court for a writ of mandamus ordering the government to institute an inverse condemnation claim, but would not be required to file a claim for damages under state tort law to satisfy the state litigation rule. In the Seventh Circuit, petitioners would be required to litigate all of their claims in state court to satisfy the state litigation rule. In the Ninth Circuit, petitioners would be required to litigate all state law remedies to ripen their claims under the state-litigation rule. In the Tenth Circuit, petitioners would have to invoke an inverse condemnation procedure in state court to satisfy the state court litigation rule unless jurisdiction were based on diversity, then state inverse condemnation procedure could be brought directly to district court thereby bypassing state court.

The result petitioners received in this case is dependent on where they lived. These inconsistencies in what is required to satisfy the state-litigation rule should lead this Court to re-examine *Williamson*.

II. THE STATUTE OF LIMITATIONS ON A TAKINGS CLAIM DOES NOT BEGIN TO RUN UNTIL THE CLAIM IS RIPE UNDER *WILLIAMSON*.

A. *Williamson* Presents Claimants with a Statute of Limitations Dilemma.

Williamson ripening rules presents claimants with resulting uncertainties concerning when the statute of limitations begins to run. A party has to guess as to what remedies need be pursued through state procedures before a federal takings claim is ripe. These uncertainties are worsened by the split in the circuits as to what is required to satisfy the state litigation rule. If a party files in district court and the claim is not ripe then one must return to state court and hope that the statute of limitations has not expired on any state procedure. If the statute of limitations has expired on the state procedures, then the federal takings claim can never ripen. *Liberty Mutual Ins. Co v. Brown*, 380 F. 3d 793, 799 (5th Cir. 2004), *Pascoag Reservoir & Dam LLC v. Rhode Island*, 337 F. 3d 87, 94 (1st Cir. 2003) If a party files in state court when the claim is already ripe under *Williamson*, then the statute of limitations can expire on the federal takings claim while the claimant is pursuing remedies in state court, as shown by the decision petitioners received in the court of appeals.

B. A Takings Claim Accrues Only After the *Williamson* Requirements Are Satisfied.

Accrual of a claim under 42 U.S.C. 1983 for purposes of commencing the statute of limitations occurs when "'the plaintiff has a complete and present cause of action *** that is, when the plaintiff can file suit and obtain relief.'" *Wallace v. Kato*, 127 S. Ct. 1091, 166 L. Ed 2d 973 *(2007)*, (quoting from *Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997). *Williamson's* language and its resulting effect is that until its rules for ripening are met a plaintiff cannot file suit nor obtain relief on his Federal takings claim. Therefore a takings claim brought pursuant to §1983 does not accrue for purposes of commencing the statute of limitations, until the plaintiff satisfies the *Williamson* requirements. A majority of the circuits agree.

For example, in a takings case concerning statutory rent control ordinances, the Ninth Circuit addressed this exact point. The Court held that "a plaintiff cannot bring a

section 1983 action in federal court until the state court denies just compensation. A claim under section 1983 is not ripe- and a cause of action under section 1983 does not accrue – until that point." *Levald v. City of Palm Desert*, 998 F. 2d 680, 687 (9th Cir. 1993). Similarly, Judge, now Justice, Kennedy made this point when he wrote "In suits for wrongful deprivation of property under 42 U.S.C. § 1983, the same considerations that render a claim premature prevent accrual of a claim for limitations purposes ..." *Norco Construction v. King County*, 801 F. 2d 1143, 1146 (9th Cir. 1986). The Seventh Circuit and Eleventh Circuit agreed with the reasoning of *Norco*. *Biddison v. City of Chicago*, 921 F. 2d 724 (7th Cir. 1991) (holding "His federal claim will ripen, and the statute of limitations will begin to run, if and when Biddison is denied just compensation by the state courts." *Id.*, at 729); and *Corn v. City of Lauderdale Lakes*, 904 F. 2d 585 (11th Cir. 1990) (explaining that the accrual of a section 1983 claim for a takings does not occur until it is ripe. *Id.* at 588).

Williamson provides "If the government has provided an adequate process for obtaining compensation, and if resort to that process yields just compensation, then the property owner has no claim against *** the Government for a taking. *Id*, at 194. Chief Justice Rehnquist, in his concurrence in *San Remo*, stated "It is not obvious that either constitutional or prudential principles require claimants to utilize **all** state compensation procedures before they can bring a federal takings claim." (emphasis added). The state procedures that must be resorted to are not limited to inverse condemnation but can include those that will provide compensation. A state common law tort remedy is such a procedure.

Physical takings, as opposed to regulatory takings, consist of conduct that is likely to give rise to a state common law tort remedy, such as trespass, waste, nuisance, or a variation of one of these such as the dewatering claim of petitioners under *Cline v. American Aggregates*, supra. This difference between physical and regulatory takings affects the interpretation of the state-litigation rule. In

regulatory takings, compensation procedures through state law would typically include state takings claims brought under state constitutions, and inverse condemnation claims seeking to enforce either state or federal constitutional rights. In physical takings, compensation procedures through state law would typically include those mentioned for regulatory takings but would also include a state common law tort remedy. *Williamson* demands that compensation be sought through state procedures before turning to district court. One of those procedures, for a physical taking, would be a state common law tort remedy.

A state common law tort remedy was sufficient to provide procedural due process when there was an allegation of destruction of personal property. *Hudson v. Palmer*, 468 U.S. 517 (1984). There, the inquiry was whether "several common law remedies available to respondent would provide adequate compensation for his property loss." *Id.* at 534-535. Since state common law tort remedies can provide constitutionally adequate compensation for a property loss under the Fourteenth Amendment, those same considerations mandate that those same tort remedies can provide compensation for a taking of property without just compensation under the Fifth Amendment.

Petitioners went to state court to seek compensation for their takings claim to meet the requirements of *Williamson*. Had they been successful in state court then they would have received damages for the taking of their property and no resort to federal court would have been necessary. This is the teaching of *Williamson*.

C. The Court of Appeals Decision Creates a Split in the Circuits that Requires This Court to Review.

The Court of Appeals below held petitioners' claims for takings accrued for purposes of commencing the statute of limitations when they knew about their injury. *McNamara v. Rittman*, supra at 637. This holding is contrary to the holdings of the Seventh, Ninth and Eleventh

Circuits, supra that the claim accrues and the statute of limitations begins to run when the ripeness requirements of *Williamson* are met. In this case that would have been in 1999 when the Ohio Supreme Court dismissed petitioners appeal as improvidently granted. Petitioners filed their complaint in district court in 2000, which was within the statue of limitations. *LRL Properties v. Portage Metro Housing Auth.*, 55 F. 3d 1097, 1105 (6th Cir. 1995, reh. en banc denied 1995 U.S. App. LEXIS 16558 (1995).

The Court of Appeals decision that petitioners claims were ripe and accrued in 1994 when they knew of their injury without regard to the effort to ripen their claim in state court not only creates a split in the circuits but disregards the teachings of *Williamson.* It has also ensnared petitioners in one of *Williamson's* traps. While petitioners were pursuing their state law procedures to ripen their claims under the state-litigation rule, the statute of limitations had already begun to run on the federal takings claim. Clearly an unjust and inequitable paradox.

CONCLUSION

Enforcing a person's constitutional rights should not require navigating through a maze of rules trying to divine the correct route with insufficient guidance. The state litigation rule of *Williamson* has proved unworkable because of differing interpretations given to it by the various circuits with the result being that a claimant's takings rights are determined by where they reside and not by the Constitution. This rule should be re-examined.

If *Williamson* continues then claimants should not be caught in the trap proceeding to state court to ripen their federal takings claim but having the statute of limitations expire on their federal claim while they are proceeding in state court. Conversely, if claimants go to federal court, believing that their claims are ripe under *Williamson*, and receive a decision that they must return to state court then be faced with the statute of limitations having run on their

state remedies and never be able to ripen their federal claims.

Respectfully Submitted,

Steve J. Edwards
(Counsel of Record)
4030 Broadway
Grove City, Ohio 43123
(614) 875-6661

APPENDIX A

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 07a0004p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 02-3965

HARRY McNAMARA, et al.,
Plaintiffs-Appellants,

v.

THE CITY OF RITTMAN,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 00-03046 – Kathleen McDonald O'Malley,
District Judge.

Argued: December 4, 2003

Decided and Filed: January 8, 2007

Before: KENNEDY, MARTIN, and MOORE,
Circuit Judges.

COUNSEL

ARGUED: Steve J. Edwards, Grove City, Ohio, for Appellants. Melvin L. Lute, Jr., BAKER, DUBLIKAR, BECK, WILEY & MATHEWS, North Canton, Ohio, for Appellee. **ON BRIEF:** Steve J. Edwards, Grove City, Ohio, for Appellants, Melvin L. Lute, Jr., Jack R. Baker, BAKER, DUBLIKAR, BECK, WILEY & MATHEWS, North Canton, Ohio, for Appellee.

OPINION

BOYCE F. MARTIN, JR., Circuit Judge. This case involves a federal takings claim arising from the City of Rittman's operation of water wells that allegedly caused damage to plaintiffs. In our initial review of the district court's judgment, we requested that the Supreme Court of Ohio answer an important question of first impression involving aproperty owner's interest in the groundwater beneath his property. The Supreme Court of Ohio has now answered that question. For the reasons articulated below, we **AFFIRM** the decision of the district court.

I

In 1973, the City of Rittman, Ohio, purchased a tract of land near the City of Sterling for the purpose of drilling three wells there to serve the City of Rittman's water needs. By 1980, the City of Rittman had completed this project and began operating the wells, which now supply it with between 500,000 and 750,000 gallons of water per day.

A. State Court Proceedings

On January 4, 1994, the plaintiffs, all of whom are residents of the City of Sterling, filed a complaint in

state court seeking damages and injunctive relief against the City of Rittman. The plaintiffs alleged that the City of Rittman's use of the three new wells lowered their aquifer, causing them to suffer water shortages and adversely affecting the quality of their water. Additionally, the plaintiffs alleged that the City of Rittman's actions forced them to drill new wells and purchase new water pumps and water-softening equipment. The plaintiffs argued that the City of Rittman's activities constituted an "unreasonable dewatering" pursuant to the cause of action recognized by the Supreme Court of Ohio in *Cline v. American Aggregates Corporation*, 474 N.E.2d 324 (Ohio 1984). The state trial court granted summary judgment to the City of Rittman based on sovereign immunity and statute of limitations grounds. The court of appeals affirmed under similar reasoning, noting that the *Cline* rules are only of immediate concern in dewatering actions brought against *private* defendants. *McNamara v. City of Rittman*, 707 N.E.2d 967, 972 (Ohio Ct. App. 1998). Where the defendant is a political subdivision of the state, however, the sovereign immunity inquiry necessarily precedes any analysis under *Cline*. *Id.* Here, the state court of appeals affirmed that sovereign immunity bars the plaintiffs' prayers for relief, whether for damages or an injunction. *Id.* The Supreme Court of Ohio dismissed the plaintiffs' appeal as improvidently granted. *McNamara v. City of Rittman*, 707 N.E.2d 943 (Ohio 1999).

B. Federal Court Proceedings

On December 7, 2000, the plaintiffs filed a federal complaint seeking relief under 42 U.S.C. §1983, alleging that the City of Rittman's actions constituted (1) a taking of their property without just compensation in

violation of the Fifth Amendment, and (2) a violation of their right to procedural due process under the Fifth and Fourteenth Amendments. The district court concluded that the plaintiffs' takings claim was timed-barred by the statute of limitations:

> [N]either *Williamson County* [*Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985)] nor any subsequent takings case law holds that a plaintiff must pursue *all conceivable means* of remedy before a federal takings claim is ripe . . . . *Williamson County* requires only that a plaintiff attempt to obtain just compensation for a taking through procedures designated for that purpose. *Williamson County*, 473 U.S. at 194-95. Where that procedure is deemed inadequate, as it has been in Ohio, *see Kruse* [*v. Village of Chagrin Falls*,] 74 F.3d at 698, then a takings claim is ripe immediately . . . . Accordingly, the Court finds that Plaintiffs' takings claim ripened immediately when Plaintiffs knew or should have known of the underlying injury. Plaintiffs must have acquired this knowledge no later than when Plaintiffs filed their state court Complaint. *See Conlin v. Blanchard*, 890 F.2d 811, 815 (6th Cir. 1989). Because the statute of limitations on §1983 claims in Ohio is two years, and because Plaintiffs did not file their takings claim in federal court until six years after they filed their state Complaint, their takings claim is barred by the statute of limitations.

D. Ct. Op., Aug. 8, 2002, at 10-11 (emphasis in original). As for the plaintiffs' due process claim, the district court ruled that it was similarly time-barred, because "Plaintiffs' procedural due process claim, like their takings claim, ripened immediately when Plaintiffs knew or should have known of the underlying injury." *Id.* at 15.

This panel heard the appeal of the district court judgment on December 4, 2003. We determined that the takings issue could not be resolved without first understanding whether an "unreasonable dewatering" action under *Cline* implicates property rights. Thus, we filed an order certifying the following question to the Supreme Court of Ohio: "Does an Ohio homeowner have a *property* interest in so much of the groundwater located beneath the land owner's property as is necessary to use and enjoyment of the owner's home?" On December 21, 2005, the Supreme Court of Ohio answered this question in the affirmative, holding that "Ohio landowners have a property interest in the groundwater underlying their land," and thus "governmental interference with that right can constitute an unconstitutional taking." *McNamara v. City of Rittman*, 838 N.E.2d 640, 646 (Ohio 2005). Having received this answer, we are confident that our Circuit's takings jurisprudence – in particular, that portion pertaining to takings under Ohio law – applies full force to this appeal.

II

This Court reviews *de novo* a district court's holding that a legal claim is barred by the applicable statute of limitations period. *See Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003). "The statute of limitations for federal civil rights claims is the appropriate state statute of limitations." *Lawson v. Shelby County*, 211 F.3d 331, 336 (6th Cir. 2000) (citing *Wilson v. Garcia*, 471 U.S. 261). In this case, the parties agreed that the applicable statute of limitations is two years. *See* Ohio Rev. Code §2305.10.[1] Based on this statute

[1] In 2004, the Ohio legislature added a time-limitation provision in actions "[f]or relief on the grounds of a physical or

[footnote continued]

of limitations, the district court dismissed the action because the federal §1983 action was filed six years after the filing of the claim in state court. The district court found that plaintiffs knew of their injury, at the very latest, at the time of filing the state court action in 1994, thus making the action four years late.

While we agree with the district court's ultimate resolution of the matter, it is important to clarify some of the nuances of this case not addressed in its opinion. In particular, we have separated our analysis into two parts: (1) "past violations" – based on the premise that the constitutional violation committed by the City, if any was committed at all, has already occurred; and (2) "continuing violations" – based on the notion that a new constitutional violation, if any exists, continues to be committed by the City, and inflicted on the plaintiffs, each day. *See Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997).

A. Past Violations

In its December 2000 complaint before the district court, the plaintiffs' primary allegation was that the City's dewatering of their wells represented an unconstitutional taking of their property, and that they should be entitled to damages – compensation in the form of $25,000 per individual plaintiff – for this taking. A threshold question in any federal takings action, how-

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regulatory taking of real property." Ohio Rev. Code §2305.-09(E). This new limitations period is four years, not two. Thus, any takings actions brought after 2004 should follow the four-year time bar, and this could be relevant to any continuing violations actions plaintiffs may wish to bring in the future, as discussed in Part II-B of this opinion. However, as to the original action brought by the plaintiffs and dismissed by the state and district courts on statute of limitations grounds, the two-year limit properly applies.

ever, is whether or not the case is ripe for review; for if it is not ripe, then we lack jurisdiction to hear the case. *Williamson,* 473 U.S. at 194-95. In *Williamson,* the Supreme Court ruled that constitutional takings claims are not ripe for federal court review until state compensation procedures, assuming they exist and are adequate, have been exhausted:

> The recognition that a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State for obtaining such compensation is analogous to the Court's holding in *Parratt v. Taylor,* 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981). There, the Court ruled that a person deprived of property through a random and unauthorized act by a state employee does not state a claim under the Due Process Clause merely by alleging the deprivation of property. In such a situation, the Constitution does not require predeprivation process because it would be impossible or impracticable to provide a meaningful hearing before the deprivation. Instead, the Constitution is satisfied by the provision of meaningful postdeprivation process. Thus, the State's action is not "complete" in the sense of causing a constitutional injury "unless or until the State fails to provide an adequate postdeprivation remedy for the property loss." *Hudson v. Palmer,* 468 U.S. 517, 532 n. 12, 104 S.Ct. 3194, 3203, n. 12, 82 L.Ed.2d 393 (1984). Likewise, because the Constitution does not require pretaking compensation, and is instead satisfied by a reasonable and adequate provision for obtaining compensation after the taking, the State's action here is not "complete" until the State fails to provide adequate compensation for the taking.

Id. at 195.

The critical inquiry after *Williamson*, therefore, is whether or not the state compensation procedures are "reasonable, certain, and adequate." *Id.* at 194. This inquiry is necessarily time-specific, because a state may have inadequate compensation procedures at one point in time, but these may at a later date be rectified by statute (via the state legislature) or through evolution of the common law (via state courts). *See Arnett v. Myers*, 281 F.3d 552, 563 (6th Cir. 2002) (stating that "*Williamson* specifically instructs that the relevant time frame for determining the adequacy of state provisions for obtaining just compensation for an alleged taking is 'at the time of the taking' "). This is exactly what happened in the 1990s in Ohio.

Ohio currently has a "reasonable, certain, and adequate procedure" available to takings claimants in state courts:

> Ohio does not have an inverse condemnation or other direct, statutory cause of action for plaintiffs seeking just compensation for a taking. Rather, Ohio law provides a statutory mechanism by which the government actor seeking to take property is under a duty to bring an appropriation proceeding against the landowner. *See* Ohio Rev. Code § § 163.-01-163.62; *Shemo v. City of Mayfield Heights*, 95 Ohio St. 3d 59, 765 N.E.2d 345, 350 (2002). A property owner who believes that his property has been taken in the absence of such an appropriation proceeding may initiate a mandamus action in Ohio court to force the government actor into the correct appropriation proceeding. . . . Over the last ten years Ohio courts, including the Ohio Supreme Court, have consistently recognized mandamus as the vehicle with which to contest an involuntary taking, no matter whether that taking is a regulatory

> or a physical one, and no matter whether the public actor is a state or local entity.

Coles v. Granville, 448 F.3d 853, 861, 865 (6th Cir. 2006). However, it was not until 1994 that the availability of such a mandamus action was made explicit by the Supreme Court of Ohio. *See Levin v. City of Sheffield Lake*, 637 N.E.2d 319, 323-34 (Ohio 1994); *see also Coles*, 448 F.3d at 864 (noting that in Ohio, the *Levin* decision was the "genesis of the modern recognition of the mandamus action to force appropriation proceedings"). Thus, prior to the *Levin* decision, Ohio's compensation procedures in takings cases were decidedly *not* adequate. *Williamson* therefore had little impact on takings claims brought in Ohio prior to *Levin*, as such claims were immediately ripe for federal review.

The plaintiffs in the instant case filed their original state-court complaint on January 4, 1994, roughly six months prior to the issuance of *Levin*. The date on which the plaintiffs filed their state-court complaint is, logically, the latest time at which they could have first known of their injury. Because there was no "reasonable, certain, and adequate procedure" available to takings claimants in Ohio state courts prior to the *Levin* decision, and because the alleged deprivation here occurred prior to *Levin*, the plaintiffs' claim was ripe for federal review already in 1994. And because it was ripe for review in 1994, it was consequently time-barred when the plaintiffs filed in federal court in 2000, well past the then two-year statute of limitations for §1983 takings actions.

The plaintiffs' procedural due process claims pertaining to past violations by the City are similarly time-barred. "Procedural due process and equal protection

claims that are ancillary to taking claims are subject to the same *Williamson* ripeness requirements . . . ." *Arnett*, 281 F.3d at 562; *see also Bigelow v. Michigan Dep't of Natural Res.*, 970 F.2d 154, 159-60 (6th Cir. 1992). This requires the plaintiffs to show that they had pursued an adequate state measure for obtaining just compensation before their due process claim would be ripe. Because no adequate measure existed at the time, however, the due process claim was ripe concurrent with the takings claim, and as such it too is barred.[2]

B. Continuing Violations

The district court did not consider whether this case might implicate the "continuing violation" doctrine for purposes of the statute of limitations. "Ordinarily, the limitations period starts to run when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997) (internal quotation marks and citations omitted). The limitations period will not bar all actions for all time, however, as in certain cases where there is a "continuing violation . . . which inflict[s] continuing and accumulating harm . . . ." *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 502 n.15. (1968) (discussing the government's continuing violation of a company's rights under the Sherman Act). In other words, "[a] law that works an

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[2] Although the district court came to the same ultimate result as we do now, it was incorrect for the court to have conducted a *separate* ripeness analysis for the due process claim. *See* D. Ct. Op., Aug. 8, 2002, at 12-14. Rather, because the procedural due process claim in this case is not independent of the underlying takings claim, ripeness analysis for the takings claims necessarily subsumes ripeness analysis for the due process claim.

ongoing violation of constitutional rights does not become immunized from legal challenge for all time merely because no one challenges it within two years of its enactment." *Kuhnle*, 103 F.3d at 522.

The primary reason why the district court failed to consider the continuing violation issue is because it was not properly raised before that court. Although we have discretion to rule on an issue of law even in the absence of its proper development below, *see Pinney Dock & Transp. Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1461 (6th Cir. 1988), we decline to exercise such discretion here. If we were to do so, we would be ruling on a takings claim not brought before the state courts in 1994, nor before the district court in 2000, but before *this* Court in 2006.[3] And such a claim, brought for the first time in 2006, would not be ripe for our review. *See Coles*, 448 F.3d at 865. Because "[t]oday, Ohio has 'reasonable, certain, and adequate procedures' for plaintiffs to pursue compensation for an involuntary taking," and because "there is no dispute that Plaintiffs have failed to request mandamus from the state," plaintiffs' continuing-violation takings claim is not yet ripe for review. *Id.* The proper course is for plaintiffs first to file a mandamus action in state court based on their continuing-violations theory.

It may seem a bit perverse that one takings claim (past violations) be barred by statute of limitations because it was delinquently filed in federal court, and yet a similar claim (continuing violations) be barred by ripeness because it was prematurely filed in federal court. But this is the nature of federal-state interplay

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[3]The issue of continuing violations was first properly raised in the parties' letter briefs submitted to this Court in March 2006.

after *Williamson*, a dance made more awkward when actions, as here, both pre- and post-date the Ohio Supreme Court's decision in *Levin*. This Court's decision in *Coles*, however, has significantly clarified how such cases should be handled in the future. *See also* Stewart E. Sterk, *The Demise of Federal Takings Litigation*, 48 WM. & MARY L. REV. 251, 292-300 (2006) (discussing "Takings Federalism" in the context of the *Williamson* ripeness requirement, and noting that if federal courts "were free to hear takings claims in the first instance, their determinations would not have the benefit of any comparable record with respect to state law").

For identical reasons, we decline to consider the plaintiffs' continuing-violation due process claim, which is ancillary to the continuing-violation takings claim. *See Bigelow*, 970 F.2d 154, 160 ("Until the state courts have ruled on the plaintiffs' inverse condemnation claim, this court cannot determine whether a taking has occurred, and thus cannot address the procedural due process claim with a full understanding of the relevant facts.").

III

Based on the discussion above, we **AFFIRM** the district court's grant of summary judgment in favor of the City of Rittman.

APPENDIX B

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

April 10, 2007

Mr. Steve J. Edwards
4030 Broadway
Grove City, OH 43132

Re: Harry McNamara, et al.
v. City of Rittman, Ohio
Application No. 06A965

Dear Mr. Edwards:

The application for the extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on April 10, 2007 extended the time to and including May 9, 2007.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by

/s/ RJ
Ruth Jones
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Steve J. Edwards
4030 Broadway
Grove City, OH 43132

Clerk
United States Court of Appeals for the Sixth Circuit
524 Potter Stewart Courthouse
100 East Fifth Street
Cincinnati, OH 45202

APPENDIX C

[Filed Aug. 8, 2002]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 1:00-CV-3046
JUDGE O'MALLEY

HARRY McNAMARA, et al.

Plaintiffs,

v.

CITY OF RITTMAN,

Defendant.

MEMORANDUM & ORDER

Plaintiffs are homeowners in and around the Village of Sterling in Wayne County, Ohio, who use private wells to obtain water for domestic use. They allege that the nearby City of Rittman (City) began pumping vast amounts of groundwater from wells drilled near Plaintiffs' homes, which lowered the aquifer and adversely affected the quality and quantity of water available to Plaintiffs. Plaintiffs assert that the City's action violated their due process rights and effected a taking without just compensation. Defendant moves for summary judgment

on each claim. The Court finds well taken Defendant's argument that Plaintiffs' claims are barred by the statute of limitations. For this reason, as explained below, Defendant's motion is **GRANTED** and this case is **DISMISSED.**

I. BACKGROUND.

The parties' groundwater dispute was first presented to the Ohio Court of Appeals, which briefly outlined the underlying facts:

> In 1973, the City of Rittman ("City") purchased a parcel of property near the City of Sterling. Preliminary studies were conducted and plans were approved for the drilling of three wells on the parcel. The wells were completed and placed into operation by 1980. Approximately five hundred thousand to seven hundred fifty thousand gallons of water a day are pumped from this wellfield to serve the needs of the City's residents.

McNamara v. City of Rittman, 707 N.E.2d 967, 969 (Ohio Ct. App. 1998). Before operation of the wellfield began, the City of Rittman held a number of meetings to inform residents of the Village of Sterling, including Plaintiffs, of the project. At one such meeting in 1976, the issue of the potential impact upon surrounding private wells was discussed, with representatives of the Ohio Department of Natural Resources suggesting the need to attempt to minimize that anticipated impact.

The Court of Appeals also summarized the nature of the homeowners' claims in that state proceeding:

> On January 4, 1994, [Plaintiffs] filed suit against the City, alleging that they suffered damages as a result of the City's use of the wellfield. Specifically, they claim that the aquifer from which they

> draw has been lowered due to the City's pumping of huge amounts of water, forcing them to endure water shortages and poor quality water, as well as forcing them to drill new wells and purchase new pumps and water softening equipment. [Plaintiffs'] First Amended Complaint asserts two claims. The first claim alleges that the City caused unreasonable harm to [Plaintiffs] as a result of its pumping of groundwater from the wellfield. The second claim alleges that [Plaintiffs] will suffer irreparable harm in the future and that [Plaintiffs] have no adequate remedy at state law. [Plaintiffs] pray for both damages and an injunction.

Id. The trial court granted summary judgment to the City on statute of limitations and sovereign immunity grounds. Employing somewhat different reasoning, the Court of Appeals affirmed, holding that, pursuant to Ohio Revised Code §2744.03(A)(3) and (5), the City was immune both from the landowners' prayer for damages and from their prayer for an injunction. *McNamara,* 707 N.E.2d at 977. On April 7, 1999, the Supreme Court of Ohio dismissed the appeal as improvidently allowed. *McNamara v. City of Rittman,* 707 N.E.2d 943 (Ohio 1999).

On December 7, 2000, Plaintiffs filed a federal Complaint, alleging essentially the same facts as in their state action.[1] Plaintiffs assert that these facts demonstrate

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[1] Plaintiffs' federal Complaint appears to be different than their state Complaint in at least two respects: first, Plaintiffs here seek only damages, while in state court they also sought an injunction; second, Plaintiffs here allege that the interruption of water service to Plaintiffs' homes was intentional, a claim they did not explicitly make in state court. The Court does not find it necessary to address these differences in order to rule on Defendant's motion.

both a violation of Plaintiffs' procedural due process rights as well as a taking without just compensation.[2] Accordingly, they seek relief pursuant to 42 U.S.C. §1983.

Defendant moves for summary judgment, advancing a number of arguments: First, that Plaintiffs' claims are barred by res judicata; second, that they are barred by the statute of limitations; third, that the Complaint fails to state a federal claim because there is no federal right to draw underground water from a private well; fourth, that the Court should abstain under *Buford v. Sun Oil Company*, 319 U.S. 315 (1943); fifth, that relief under §1983 is not appropriate because Plaintiffs received full adjudication of their claims in state court; and sixth, that Plaintiffs' takings claim is not ripe.

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[2] Although Plaintiffs affirmatively (and repeatedly) limit their allegations to these two claims, (*see* Pl. Mem. Contra at 2, 6), their Complaint makes passing reference to substantive due process and the Ohio Constitution as well. (Compl. ¶17.) To the extent that the Complaint purports to state a violation of substantive due process, that generalized claim can provide Plaintiffs no independent relief, where, as here, it is grounded on the same underlying injury as Plaintiffs' takings claim. *See Albright v. Oliver*, 510 U.S. 266, 273 (1994) (finding that "[w]here a particular amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims" (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989))). To the extent that the Complaint alleges a claim under the Ohio Constitution, the Court declines to exercise its supplemental jurisdiction over that claim, having disposed of all federal claims. 28 U.S.C. §1367-(c)(3).

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) governs summary judgment motions and provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(e) specifies the materials properly submitted in connection with a motion for summary judgment:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

However, the movant is not required to file affidavits or other similar materials negating a claim on which its opponent bears the burden of proof, so long as the movant relies upon the absence of the essential element in the pleadings, depositions, answers to interrogatories,

and admissions on file. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

In reviewing summary judgment motions, this Court must view the evidence in a light most favorable to the non-moving party to determine whether a genuine issue of material fact exists. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *White v. Turfway Park Racing Ass'n, Inc.*, 909 F.2d 941, 943-44 (6th Cir. 1990). A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Determination of whether a factual issue is "genuine" requires consideration of the applicable evidentiary standards. Thus, in most civil cases the Court must decide "whether reasonable jurors could find by a preponderance of the evidence that the [non-moving party] is entitled to a verdict." *Id.* at 252.

Summary judgment is appropriate whenever the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322. Moreover, "the trial court no longer has a duty to search the entire record to establish that it is bereft of a genuine issue of material fact." *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989) (citing *Frito-Lay, Inc. v. Willoughby*, 863 F.2d 1029, 1034 (D.C. Cir. 1988)). The non-moving party is under an affirmative duty to point out specific facts in the record as it has been established which create a genuine issue of material fact. *Fulson v. City of Columbus*, 801 F. Supp. 1, 4 (S.D. Ohio 1992). The non-movant must show more than a scintilla of evidence to overcome summary judgment; it is not enough for the non-moving party to show that there is some metaphysical doubt as to material facts. *Id.*

III. ANALYSIS

A. *Property rights in groundwater use.*

The Court must first determine whether access to groundwater is a property right on which takings or procedural due process claims may lie. What constitutes a "property right" is not determined by looking to the Constitution, rather, these rights are created by "independent sources, such as state law." *Arnett v. Myers*, 281 F.3d 552, 565 (6th Cir. 2002) (citation omitted). In *Cline v. American Aggregates Corp.*, 474 N.E.2d 324 (Ohio 1984), the Ohio Supreme Court adopted §858 of the Restatement of Torts (Second) to set out the common law rights of landowners with regard to groundwater. *Cline*, 474 N.E.2d at 327. Section 858 applies a "reasonable use" doctrine, which provides that landowners are liable for interference with groundwater only if their use is unreasonable or causes unreasonable harm to others who are entitled to the water. Restatement (Second) of Torts §858 (1979).

The question is whether §858, and ultimately *Cline*, describes a property interest in groundwater. One federal court, relying on an Ohio Court of Appeals' decision, has held that it does not. *See Hensley v. City of Columbus*, No. C2-99-888 (S.D. Ohio May 23, 2002) (relying on *Smith v. Summit County*, 721 N.E.2d 482 (Ohio Ct. App. 1998)). The *Smith* Court found that §858 established rights exclusively in tort, not in property. *Smith*, 721 N.E.2d at 485-86. It based its decision, in part, on the phrasing of the section itself, noting that it is set out in terms of nonliability, rather than granting "title" in groundwater. *Id.* If this Court were to follow *Smith*, Plaintiffs' claims would be subject to dismissal on that ground alone.

The Court is disinclined to adopt *Smith*'s reading of §858 and *Cline*, however. The Restatement itself recognizes that [a] n unprivileged interference [in water rights] is a tort, although, like a trespass or nuisance, it is a tort directed at an interest in property." Restatement (Second) of Torts (ch. 41 introductory note and scope note); *see also id.* §858, cmt. b (noting that the right to withdraw groundwater is a "property right" and that Section §858 "retains the property basis of the common law rules pertaining to ground water"). Absent some controlling authority to the contrary, this Court is not prepared to believe that the Ohio Supreme Court would find, as the Court of Appeals did in *Smith*, that access to groundwater for domestic use is not connected to enjoyment of the overlying land. *Cf. State ex rel. Royal v. City of Columbus*, 209 N.E.2d 405 (1965) (finding that frequent low flying aircraft may constitute taking when flights cause a "direct and immediate interference with enjoyment and use of land"). The Court, thus, is inclined to believe that the interest at stake is sufficiently bound up in notions of property that it may support Plaintiffs' takings and due process claims. Because the Court concludes that Plaintiffs' claims must be dismissed on other grounds, the Court ultimately need not decide this question, however, and, thus, declines to do so.

B. *Takings claim.*

The Court finds, nevertheless, that Plaintiffs' takings claim is barred by the statute of limitations. Section 1983 actions accrue " 'when the plaintiff knows or has reason to know of the injury which is the basis of the action.' " *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516, 520 (6th Cir. 1997) (quoting *Seveir v. Turner*, 742 F.2d 262, 273 (6th Cir. 1984)). Federal

courts adjudicating §1983 actions borrow the forum state's general personal injury limitations period. *Wilson v. Garcia*, 471 U.S. 261 (1985). In Ohio, pursuant to Ohio Rev. Code §2305.10, this period is two years.

Defendant asserts that Plaintiffs must have known about the alleged injury which is the basis of their action not later than January 4, 1994, the day they filed their state court action, so that the statute of limitations expired, at the latest, on January 4, 1996. Since Plaintiffs did not file their federal Complaint until December 7, 2000, Defendant asserts that Plaintiffs' claims are presented almost four years too late.

Plaintiffs do not dispute that the appropriate statute of limitations is two years. Instead, they assert that their takings claim did not accrue until they were ultimately denied relief by the state courts in their effort to obtain a remedy in tort. The statute of limitations, they argue, did not begin to run until the Ohio Supreme Court dismissed their tort-claim appeal on April 7, 1999. Because they filed their federal Complaint within two years of that date, Plaintiffs argue that their federal claims are timely.

Plaintiffs rely on *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), and *Kruse v. Village of Chagrin Falls*, 74 F.3d 694 (6th Cir. 1996), to support their position. In *Williamson County*, the Supreme Court found that a takings claim is not ripe until it is determined (1) that the state actor has made a final decision regarding the activity underlying the alleged taking; and (2) "that if the state had a 'reasonable, certain, and adequate provision for obtaining [just] compensation . . . at the time of the taking,' just compensation was sought and denied through that procedure." *Arnett v. Myers*, 281 F.3d at

562 (quoting *Williamson County*, 473 U.S. at 194). The first prong is not in dispute; the parties agree that the final decision was made to operate the wells, despite the known potential impact upon Plaintiffs' property, by no later than 1980, when the wells became operable. The parties disagree, however, on the application of *Williamson County*'s second prong to this case.

The Sixth Circuit, applying *Williamson County*'s second prong in Ohio, found that the state does not have a "reasonable, certain, and adequate" provision for obtaining just compensation. *Kruse*, 74 F.3d at 698. In *Kruse*, the plaintiffs' backyard was destroyed by a village's street-widening program. *Id.* at 696. When the plaintiffs filed an action for trespass in state court, the Court of Appeals found that the land rightly belonged to the plaintiffs, but that the Village was immune from damages or injunctive relief. *Id.* at 696. The plaintiffs subsequently brought takings and procedural due process claims in federal court. The trial court, however, dismissed both claims because the plaintiffs did not pursue inverse condemnation remedies through a writ of mandamus. *Id.* at 696-97. The Sixth Circuit reversed, holding that Ohio had no explicit statutory procedures governing inverse condemnation and that the mandamus procedure through which a plaintiff might receive post-deprivation compensation was "confusing and uncertain at best." *Id.* at 698. Because no adequate state post-deprivation remedy existed, the Sixth Circuit found the plaintiffs' claims ripe. *Id.* at 701.[3]

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[3] A recent Sixth Circuit panel has suggested that *Kruse* may only be applicable to cases involving physical, as opposed to regulatory, takings. *See Tri-Corp. Management Co. v. Praznik*, No. 00-4326, 2002 U.S. App. LEXIS 6199 (6th Cir. March 29, 2002)

[footnote continued]

Plaintiffs assert that, under *Kruse, inverse condemnation* remedies need not be pursued before a federal takings claim is ripe, but Plaintiffs must still pursue *other* judicial remedies in state court (or assert the inadequacy of those remedies) before their takings claim would ripen. Plaintiffs point out that, in *Kruse,* the plaintiffs pursued a state remedy – trespass – that was unrelated to "inverse condemnation" before bringing their federal takings claim. Because of the delay caused by pursuing the state trespass suit, Plaintiffs note that "the defense of the statute of limitations would have been available" against the *Kruse* plaintiffs in federal court. (Pl. Mem. Contra at 21.) Plaintiffs here argue that the only way the *Kruse* plaintiffs' claims would have been timely is if the Sixth Circuit considered those claims to be unripe until the state court dismissed their trespass claim. In this respect, Plaintiffs argue that they are in precisely the same position as the plaintiffs in *Kruse,* and argue that this Court should reach precisely the same result as the Sixth Circuit did in that case. At bottom, this argument relies on a seemingly logical premise: If Plaintiffs had been successful in their state action for tort, they would not be entitled to sue in federal court on a takings theory, because they would have received "compensation" for

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(noting arguable inconsistency between *Kruse* and *Silver v. Franklin Township, Board of Zoning Appeals,* 966 F.2d 1031 (1992)). Because the allegations in this case are appropriately characterized as physical takings, *see Tularc Lake Basin Water Storage District v. United States,* 49 Fed Cl. 313, 319 (Fed. Cl. 2001), the Court applies *Kruse* to Plaintiffs' claims. Even if *Kruse* were *not* applicable, however, Plaintiffs would not be entitled to relief: Absent *Kruse,* the Court would simply apply the basic rule that a plaintiff must pursue inverse condemnation proceedings before its federal takings claim ripens. *See Silver,* 966 F.2d at 1035. Since Plaintiffs here have not done so, their claims would not be ripe.

the deprivation. Accordingly, Plaintiffs argue, this Court could not assess whether a "taking without just compensation" occurred without knowing whether the state would have compensated the Plaintiffs in tort.[4]

The Court agrees with Plaintiffs that the claims at issue in *Kruse* appear vulnerable to a statute of limitations attack. The problem, however, is that the Court of Appeals never addressed that issue. While a statute of limitations defense was raised in the trial court, the district judge declined to address it because he found the case susceptible to dismissal on other grounds. Because there was no cross appeal filed, the issue was simply not presented to the Court of Appeals. This Court, accordingly, cannot draw meaningful conclusions about how the *Kruse* Court would have addressed a statute of limitations defense if such a defense were before it.

In any case, neither *Williamson County* nor any subsequent takings case law holds that a plaintiff must pursue *all conceivable means* of remedy before a federal takings claim is ripe. Taken to its logical extreme, this position would require pursuit if any number of conceivable strategies – not only, for example, advancing

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[4] Although Plaintiffs' Complaint alleges that no adequate state law remedy exists because the City of Rittman is immune from tort liability, (Compl. ¶14), it does not expressly allege that Ohio's inverse condemnation procedures are inadequate. In a regulatory takings context, the Sixth Circuit has recently found that when a Complaint contained no allegations with regard to the adequacy of inverse condemnation procedures, a plaintiff's takings claim is not ripe for review. *See Tri-Corp Management Co. v. Praznik*, No. 00-4326, 2002 U.S. App. LEXIS 6199 (6th Cir. March 29, 2002). *But cf. Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002) (reiterating that notice pleading is sufficient). Because Defendant has not raised this issue, and in light of the Court's ultimate decision on this claim, however, the Court need not address the adequacy of the Complaint in this respect.

all possible judicial claims (negligence, nuisance, trespass, due process) – whether or not those claims are themselves untimely or otherwise subject to well-established defenses – but also, perhaps, seeking private legislation at the state level – before a federal takings claim would ripen. This is not the law. *Williamson County* requires only that a plaintiff attempt to obtain just compensation for a taking through procedures designated for that purpose. *Williamson County*, 473 U.S. at 194-95. Where that procedure is deemed inadequate, as it has been in Ohio, *see Kruse*, 74 F.3d 698, then a takings claim is ripe immediately. *See Arnett*, 281 F.3d at 562 (finding takings claim ripe because taking occurred prior to Tennessee statute establishing inverse condemnation procedures); *see also Retirement Management Co. v. City of Wickliffe*, No. 99-CV-1058 (N.D. Ohio January 14, 2000) (finding that because Ohio inverse condemnation procedures are inadequate uuder *Kruse*, plaintiff's federal claim is ripe).

Accordingly, the Court finds that Plaintiffs' takings claim ripened immediately when Plaintiffs knew or should have known of the underlying injury. Plaintiffs must have acquired this knowledge no later than when Plaintiffs filed their state court Complaint. *See Conlin v. Blanchard*, 890 F.2d 811, 815 (6th Cir. 1989). Because the statute of limitations on §1983 claims in Ohio is two years, and because Plaintiffs did not file their takings claim in federal court until six years after they filed their state Complaint, their takings claim is barred by the statute of limitations.

At a minimum, Plaintiffs should be chargeable with an understanding that they had a ripe federal claim by the confluence of events consisting of the Sixth Circuit's January 1996 decision in *Kruse* and the dismissal of their

state tort claims in May 1996 on both timeliness and immunity grounds. Again, because those events occurred some four years before this action was filed, this action is time-barred.[5]

B. *Procedural due process claim.*

Defendant also argues that Plaintiffs' procedural due process claim is barred by the statute of limitations. In response, Plaintiffs employ a legal theory similar to the theory they employed with regard to their takings claim: They argue that the procedural due process claim did not accrue until they were denied the judicial postdeprivation remedies they sought through tort. Tort remedies are regularly considered by courts when analyzing whether postdeprivation remedies are adequate for procedural due process purposes. *See Parratt v. Taylor*, 451 U.S. 527, 543 (1981) (noting that availability of state tort claim for deprivation of property is "sufficient to satisfy the requirements of due process"); *Zinerman v. Burch*, 494 U.S. 113, 126 (1990) (noting that inquiry includes examination of "any remedies for erroneous deprivations provided by statute or tort law"); *National Communication Systems, Inc. v. Michigan Public Service Commission*, 789 F.2d 370, 373 (6th Cir. 1986) (considering adequacy of state common law remedy for "malicious destruction of property" in determining whether postdeprivation remedies were adequate under *Parratt*). Plaintiffs assert, accordingly,

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[5] At bottom, Plaintiffs are asking this Court *both* to permit them to avoid pursuit of an inverse condemnation action in state court before resort to this forum *and* to deem their filing of a defective state court claim sufficient to toll the statue of limitations on an injury which occurred some twenty years earlier; Plaintiffs simply ask too much.

that their procedural due process claim could not have ripened before they sought, and were denied, tort damages. Finally, because Plaintiffs' tort claims were dismissed on immunity grounds, they argue that the postdeprivation remedies are inadequate. *See Hudson v. Palmer*, 468 U.S. 517, 536 (1984) (raising, but not deciding, issue of whether immunity would make tort remedy "inadequate"); *National Communication Systems*, 789 F.2d at 373 (same).

Although Plaintiffs vociferiously argue that postdeprivation remedies in this case are *inadequate*, they have not demonstrated that those remedies are *relevant* to their case. Postdeprivation remedies are only relevant to a procedural due process claim when a predeprivation hearing is impracticable. That is, to the extent that the city could have, and should have, given Plaintiffs notice and an opportunity to be heard *before* depriving them of their groundwater, the concrete due process injury has already occurred by the time the actual deprivation is complete.

The Supreme Court has found several circumstances under which predeprivation hearings are not practicable and postdeprivation remedies must be sought. For instance, if the City was acting as a result of a need for "quick action," such as reacting to an emergency situation, then predeprivation hearings are not required. *Parratt v. Taylor*, 451 U.S. 527, 539 (1981); *see also Harris v. City of Akron*, 20 F.3d 1396 (6th Cir. 1994). As well, if the deprivation was caused by a random or unauthorized act of a state employee, then it is inappropriate to demand that the state hold a predeprivation hearing; a plaintiff must pursue postdeprivation remedies. *See id.* at 541 (noting that when deprivation results from random, unauthorized act, "[i]t is difficult

to conceive of how the State could provide a meaningful hearing before the deprivation takes place").

But Plaintiffs do not demonstrate that these circumstances, or analogous ones, were present here. No emergency or need for quick action existed which would have made a hearing impracticable. Not only was the action causing the Plaintiffs' injury authorized, but Plaintiffs allege that the conduct was intentional – that the City knew that the wells would cause harm to Plaintiffs but drilled them there anyway. (Compl. ¶ 15; Pl. Mem. Contra at 5.)[6] Under these circumstances, applying *Parratt* is inappropriate. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (noting that where a deprivation results from conduct pursuant to an established state procedure or policy, postdeprivation remedies do not satisfy due process); *Moore v. Board of Education of Johnson City Schools*, 134 F.3d 781, 785 (6th Cir. 1998) (noting that where deprivation not random or unauthorized but rather pursuant to established procedures, plaintiff required "neither to plead nor prove the inadequacy of [postdeprivation] state law remedies"). Accordingly, postdeprivation remedies are irrelevant: Plaintiffs' procedural due process claim ripened, at the latest, at the time of the deprivation.[7]

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[6]Indeed, it appears that Plaintiffs were privy to the information regarding the potential impact on their water supplies which they now claim the City should not have ignored. In such circumstances, it would appear that Plaintiffs had several years within which to take action or seek compensation for an anticipated taking before the wells were operable. Instead, Plaintiffs waited some fourteen years after operations began, and, by their own admission, between six and eleven years after experiencing clearly identifiable harm to their water supply, before even proceeding to state court.

[7]It is more than arguable, however, that Plaintiffs had more than adequate opportunities to seek pre-deprivation process, but failed to avail themselves of those opportunities.

The ultimate result, under the circumstances presented here, is that ripeness with regard to Plaintiffs' procedural due process claim mirrors ripeness of their takings claim. This result is consistent with the line of decisions that suggest that when a procedural due process claim is raised along with a takings claim, the Court should ordinarily apply identical ripeness requirements to both claims. *See Bigelow v. Michigan Department of Natural Resources*, 970 F.2d 154 (6th Cir. 1992) (finding that ripeness inquiry for ancillary procedural due process claim is altered when presented along with takings claim so that ripeness analysis for both claims is identical); *see also Arnett v. Myers*, 281 F.3d 552, 562-63 (same); *see also Kruse*, 74 F.3d at 697-701 (not differentiating procedural due process claim from takings claim in ripeness inquiry).

Plaintiffs' procedural due process claim, like their takings claim, ripened immediately when Plaintiffs knew or should have known of the underlying injury. Plaintiffs must have acquired this knowledge no later than when Plaintiffs filed their state court Complaint. Because the statute of limitations on §1983 claims in Ohio is two years, and because Plaintiffs did not file their procedural due process claim in federal court until almost five years after they filed their state Complaint, that claim, like their takings claim, is barred.

For the foregoing reasons, the Defendant's motion for summary judgment is **GRANTED** and this case is **DISMISSED.**

IT IS SO ORDERED.

/s/ Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

APPENDIX D

[EXCERPTS]

[0116]

INVESTIGATION OF GROUND WATER LEVELS IN THE VICINITY OF STERLING, WAYNE COUNTY, OHIO

OHIO DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER
GROUND WATER RESOURCES SECTION

PREPARED BY JIM RAAB, BILL HAIKER,
REBECCA PETTY AND DAVE CASHELL
JUNE, 1993

[0117]

INTRODUCTION

In the early 1970's, the City of Rittman, located in Milton Township of Wayne County, decided their present wellfield would be insufficient to meet the future water needs of the growing city. A new wellfield site was selected approximately one quarter mile west-southwest of the Village of Sterling, also located in Milton Township, Wayne County. Figure 1 shows the location of the new wellfield and the surrounding area.

Concerned about potential impacts to existing private water wells in the vicinity of the Village of Sterling, the Milton Township Trustees conducted a meeting in

Sterling in June, 1976. Representatives of the ODNR-Division of Water-Ground Water Resources Section (GWRS) attended this meeting and stated that pumping the wellfield would lower water levels in the area. They also advised the City of Rittman to attempt to minimize the effects of pumping the wellfield on the surrounding private wells. On April 10, 1979, equipment was installed on an observation well to continuously record ground water levels in the wellfield. Monthly water-level monitoring was also begun in several private wells surrounding the wellfield.

Three large diameter production wells were completed for the City of Rittman at the new wellfield site in September, 1979. Production at the new wellfield commenced in January, 1980. Ground water level data collected by the GWRS documented that, as expected, water levels were lowered in response to pumping in the new wellfield. Approximately 15 wells within the Village of Sterling experienced pumping difficulties within the first 12 months of wellfield operation. Residents in and around the Village of Sterling were upset by the lowering of the water levels and believed the City of Rittman should be held accountable for any detrimental effects from their wellfield.

* * *

[0119]

In August, 1992 a Sterling resident contacted the GWRS expressing concern that a number of wells in Sterling were experiencing problems and requested technical assistance in determining the current water level situation in and around the Village of Sterling. Since 1980, approximately 58 wells have been drilled or redrilled in

the Sterling area. This report discusses our findings to date.

Geology and Hydrogeology

A review of the well logs and other hydrogeologic data on file with the GWRS indicates that both the City of Rittman's wells and the private residential wells are developed in a northwest to southeast trending buried valley. This ancient valley existed prior to glaciation but was subsequently filled with Illinoian and Wisconsinan age glacial deposits. These glacial deposits include an upper zone, generally less than 60 feet thick, comprised of thin lenses of sand and gravel interbedded in a clay-rich till. Underlying this deposit is a relatively thick sequence of glacial meltwater deposits. These outwash deposits can range from 100 to 150 feet thick and consist predominantly of relatively clean sand and gravel with minor to moderate amounts of silt and clay. Properly constructed wells in these deposits can yield over 500 gallons per minute (gpm) (Crowell, ODNR, 1979).

The uppermost bedrock formation within the study area is the Cuyahoga Formation, which was deposited during the Mississippian Period (320-360 million years before present). The Cuyahoga Formation consists of interbedded sandstone and shale bedrock. While generally adequate amounts of water (10 to 25 gpm) can be obtained from wells drilled into the bedrock away from the buried valley, the overlying sand and gravel aquifer provides a much better source of water within the study area.

* * *